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September 17, 2020

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Notice of Oral Ex Parte Communications*

WT Docket No. 19-348, *Facilitating Shared Use in the 3.1-3.55 GHz Band*
WP Docket No. 07-100, *Amendment of Part 90 of the Commission's Rules*
WT Docket No. 18-120, *Transforming the 2.5 GHz Band*

Dear Ms. Dortch:

On September 15, 16, and 17, 2020, I and others met with Commission staff, as described in the attachment to this letter, regarding the above-referenced proceedings.

3.45-3.55 GHz Band

Service Rules

In our meetings, we stated that T-Mobile USA, Inc. (“T-Mobile”)^{1/} strongly supports the Commission’s adoption of the draft Report and Order and Further Notice of Proposed Rulemaking that would make the 3.45-3.55 GHz band available for flexible commercial use.^{2/} This spectrum, along with other spectrum in the 3.1-3.45 GHz band that the Commission should, with the National Telecommunications and Information Administration (“NTIA”), continue to evaluate for commercial wireless use, will facilitate the further deployment of Fifth Generation (“5G”) wireless technologies. Because of the important role that this mid-band spectrum can play in further developing 5G networks, T-Mobile is encouraged that the Commission has

^{1/} T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly-traded company. T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020.

^{2/} See *Facilitating Shared Use in the 3400-3550 MHz Band*, Draft Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC2009-01 (draft rel. Sept. 9, 2020) (“*Draft 3.45-3.55 GHz Order and FNPRM*”).

proposed to license this spectrum on an exclusive basis, with full-power operations.^{3/} The Commission should not consider designating any of this spectrum for shared use between non-federal users. The Commission recently made 1,200 megahertz of spectrum in the 6 GHz band available for unlicensed use and another 150 megahertz in the 3550-3700 MHz band potentially accessible for licensed-by-rule operations through spectrum access systems.^{4/}

T-Mobile is similarly encouraged that the Commission would propose mechanisms that will promote cooperation between commercial wireless licensees and federal government users of the 3.45-3.55 GHz band.^{5/} The regime adopted for use of the AWS-3 bands,^{6/} which featured cooperation between licensees and federal government users, as updated by the draft Further Notice of Proposed Rulemaking, is well-suited for the deployment of the 3.45-3.55 GHz band. Nevertheless, as occurred with the AWS-3 and 3550-3700 MHz bands,^{7/} the Commission and NTIA should continue to evaluate whether coordination areas can be reduced, and the Commission should seek comment on how that may occur in the future and how licensees' rights will be affected once coordination zones are reduced. The Commission should also, as the draft suggests, solicit comments on licensees' abilities to work directly with federal agencies to promote individualized arrangements that both protect federal operations and maximize licensees' ability to deploy the spectrum.

Spectrum Aggregation

While the draft Further Notice of Proposed Rulemaking proposes rules that T-Mobile generally supports and asks questions that will be useful to develop regulations governing the 3.45-3.55 GHz band, T-Mobile urges the Commission to broaden its inquiry regarding spectrum aggregation limits in the context of authorizing use of the band in three respects. First, the Commission should ask and examine whether applying a spectrum screen to greenfield spectrum awarded through competitive bidding makes any sense at all. For example, there is no change in the competitive landscape inherent in acquiring spectrum without customers, no changes whatsoever in the Herfindahl-Hirschman Index used to measure market concentration, and no

^{3/} T-Mobile continues to assess all of the technical rules in the draft Further Notice of Proposed Rulemaking and expects to address those proposals in its comments in this proceeding. To the extent that those proposals will permit full-power operations and are consistent with rules governing other mobile wireless operations, they appear directionally appropriate.

^{4/} See *Unlicensed Use of the 6 GHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020); *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015) ("2015 3.5 GHz Order"); *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598 (2018).

^{5/} See *Draft 3.45-3.55 GHz Order and FNPRM* ¶¶ 44-52.

^{6/} See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Report and Order, 29 FCC Rcd 4610 (2014).

^{7/} See *The Federal Communications Commission and the National Telecommunications and Information Administration: Coordination Procedures in the 1695-1710 MHz and 1755-1780 MHz Bands*, Public Notice, 29 FCC Rcd 8527 (2014); *2015 3.5 GHz Order* ¶¶ 258-68; Letter from Paige R. Atkins, Associate Administrator, Office of Spectrum Management, NTIA, to Julius P. Knapp, Chief, Office of Engineering and Technology, FCC, GN Docket No. 12-354 (filed March 24, 2015).

loss of any competitor. The fact that a bidder might exceed some numerical benchmark based on amounts of spectrum in a given market does not give rise to any cognizable competitive concern if the spectrum is going to be deployed to deliver services and not warehoused to withhold an input from others. Accordingly, the Commission should invite comment on the threshold question of whether the spectrum screen should be used in an auction of the 3.45-3.55 GHz band or in context of greenfield spectrum.

Second, if a spectrum screen is used, the Commission should ask whether it should use a post-auction case-by-case review – rather than simply deciding before the auction limits on the amount of spectrum any bidder can win. While the Commission adopted a post-auction case-by-case review in the C-band proceeding,^{8/} that approach appears to be an unexplained departure from the Commission’s findings in the Mobile Spectrum Holdings proceeding. There, the Commission said:

. . . clear determination, instead of case-by-case analysis post-auction, would provide potential bidders with greater certainty in the auction process regarding how much spectrum they would be permitted to acquire at auction. Providing such certainty is consistent with Section 309(j)(3)(E) of the Communications Act, which emphasizes the need for clear bidding rules ‘to ensure that interested parties have a sufficient time to develop business plans, assess marketplace conditions, and evaluate the availability of equipment for the relevant services.’^{9/}

The Commission’s rationale was correct then, and it remains correct today. When the Commission engages in a spectrum screen analysis, it requires detailed information about providers’ behavior, typically on a county-level basis, and ultimately makes decisions based on a range of available information. In the context of transactions, that analysis may take many months, and parties cannot reliably predict the outcome of Commission analysis. Applying that same process to auctions – where a Commission goal is to have unused spectrum promptly deployed to serve the public – is therefore unworkable. And, any spectrum re-auction can take years, during which time the divested spectrum will remain fallow.

The uncertainty caused by a post-auction case-by-case review can and will affect the ability and willingness to bid. Prospective bidders need to raise funds before the auction, put those funds on the table during the auction, and make payments for winning bids before licenses are issued. A process that creates risks and uncertainty that licenses won at auction will not be awarded is a deterrent to funding, bidding, and the success of any auction. In contrast, a process that decides eligibility and rights to obtain licenses before competitive bidding starts promotes the transparency and predictability that are critically important to securing funding to bid and the decision by companies to bid.

Finally, in any event, the current spectrum screen is woefully out of date. The Commission’s spectrum aggregation policies were initially formulated when there were a limited number of

^{8/} See *Expanding Flexible Use in the 3.7-4.2 GHz Band*, Report and Order, Order Proposing Modification, 35 FCC Rcd 2343, ¶ 83 (2020).

^{9/} *Policies Regarding Mobile Spectrum Holdings, et al.*, Report and Order, 29 FCC Rcd 6133, ¶ 139 (2014) (“*Mobile Spectrum Holdings Order*”) (quoting 47 U.S.C. § 309(j)(3)(E)).

spectrum bands designated for commercial mobile service use.^{10/} Since that time, the Commission has licensed significantly more spectrum, many of which is not included in the spectrum screen. For example, millimeter wave spectrum, which is the centerpiece of other providers' 5G service offerings are not included in the screen.^{11/} Similarly, other licensed spectrum, like the 3550-3650 MHz band, or 700 MHz spectrum used in connection with the FirstNet network (used by AT&T to provide competitive service), are available to provide commercial services but are not included in the screen.^{12/} In addition, the spectrum screen does not include unlicensed spectrum, which is increasingly being used to provide competitive wireless services, particularly by cable companies.

All of these factors favor the Commission asking broader questions regarding spectrum aggregation, rather than simply proposing the rules specified in the draft Further Notice of Proposed Rulemaking. In particular, the Commission should ask whether it should evaluate metrics other than the number of megahertz held by a licensee in evaluating spectrum aggregation. The Commission has appropriately focused on the means by which it can ensure that spectrum is deployed and is not permitted to remain fallow.^{13/} In considering spectrum aggregation, the Further Notice of Proposed Rulemaking in this proceeding should therefore ask whether a provider's *deployment* should impact the Commission's spectrum aggregation analysis, rather than focus on an evaluation of just the spectrum for which an entity is licensed.

4.9 GHz Band

T-Mobile supports the Commission's continued evaluation of the use of the 4940-4990 MHz band (the "4.9 GHz band"), which has been historically underutilized. While the draft Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking in this proceeding would contemplate the selection of a single state-endorsed entity to lease the spectrum to commercial entities for non-public safety operations,^{14/} T-Mobile encourages the Commission to solicit input

^{10/} See generally *Mobile Spectrum Holdings Order*.

^{11/} See, e.g., Andre Fuetsch, *The Future of AT&T 5G*, AT&T TECHNOLOGY BLOG (Sept. 16, 2020), https://about.att.com/innovationblog/2020/09/future_att_5g.html ("AT&T's 5G network reached nationwide coverage in July, but hitting that milestone hasn't slowed us down. In fact, quite the opposite – we're now more energized than ever about continuing to expand our 5G footprint (in both sub-6 and millimeter wave (mmWave) technology) to begin helping enable revolutionary new capabilities for businesses and customers alike."); News Release, *Corning and Samsung Complete Trials of New Indoor Cell Sites to Extend 5G Coverage*, Verizon (Sept. 16, 2020), <https://www.verizon.com/about/news/verizon-corning-samsung-complete-trials> ("Verizon has recently completed lab trials with Corning and begun lab trials with Samsung on new 5G mmWave in-building solutions which, when commercially launched, will provide 5G mmWave coverage inside facilities such as hospitals, manufacturing facilities, warehouses, schools, ports, retail stores and more.").

^{12/} See *Mobile Spectrum Holdings Order* ¶ 129 (excluding the D Block from the spectrum screen); *2015 3.5 GHz Order* ¶ 117 n.276 (excluding 3.5 GHz Priority Access Licenses from the spectrum screen).

^{13/} See, e.g., *Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289, ¶ 153 (2007); *Wireless Telecommunications Bureau Announces Process for Relicensing 700 MHz Spectrum in Unserved Areas*, Public Notice, 34 FCC Rcd 350 (2019).

^{14/} See *Amendment of Part 90 of the Commission's Rules*, Draft Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking, FCC-CIRC2009-02 (draft rel. Sept. 9, 2020) ("*Draft 4.9 GHz Order and FNPRM*").

on other options. To more completely promote the value of the 4.9 GHz band, the Commission should inquire whether it should permit – but not require – public safety licensees to *sell* spectrum rights to non-public safety entities. T-Mobile is encouraged that the draft Sixth Report and Order would reject suggestions that this spectrum be made available to AT&T for incorporation into the FirstNet network and urges the Commission to adopt that position in the draft.^{15/}

2.5 GHz Band

Finally, we urged the Commission to proceed with measures necessary to conduct an auction for the 2496-2690 MHz band (“2.5 GHz band”). As we stated in more detail in the *ex parte* letter we submitted on September 16, 2020^{16/} –

- The pending petitions for reconsideration in this proceeding should be dismissed and need not delay the issuance of a pre-auction public notice in any case.
- The identification of available spectrum need not delay the issuance of a pre-auction public notice.
- The Commission should dismiss any requests for waiver that would allow applicants to serve geographic areas that are not considered “rural Tribal lands” as defined by the Commission.
- The Commission should propose to conduct the 2.5 GHz auction using a time-tested simultaneous multiple-round auction format.
- The auction format should recognize that not all licenses that will be made available in the 2.5 GHz auction are fungible and should assign bidding units accordingly.
- The 2.5 GHz auction should be conducted on a county basis.

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Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter has been submitted in the record of the above-referenced proceedings. If there are any questions concerning this matter, please contact the undersigned directly.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey
Vice President, Government Affairs
Technology and Engineering Policy

cc: (via e-mail)
Sean Spivey
Erin McGrath

^{15/} See Draft 4.9 GHz Order and FNPRM ¶ 21.

^{16/} See Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 (filed Sept. 16, 2020).

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Meeting Participants

Meeting Date	September 15, 2020	September 16, 2020	September 17, 2020
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